

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Settlement Agreement") is entered into this 26th day of April, 2016 ("Effective Date") by and between Main Fair Pharmacy [REDACTED] its owners, officers, directors, employees, successors, and assigns ("Main Fair"), represented by Angelo Cifaldi, Esq. of Goldman, Wilentz and Spitzer, PA and the STATE OF NEW JERSEY, OFFICE OF THE STATE COMPTROLLER, MEDICAID FRAUD DIVISION ("MFD"). Main Fair and MFD are hereinafter collectively referred to as the "Parties" and each individually as a "Party."

WHEREAS, MFD conducted a pharmacy inventory analysis ("Inventory Analysis") and alleged that during the period of review between August 1, 2011 and October 31, 2014, Main Fair submitted a total of 4,158 claims for pharmaceutical products provided to Medicaid patients that could not be supported by wholesaler invoices for an overpayment amount of \$883,025.70 (this scope and period is hereafter referred to as the "covered conduct");

WHEREAS, Main Fair supplied documentation to support some of the discrepant claims thereby reducing the overpayment amount;

WHEREAS, the parties have agreed that Main Fair should be given credit in the amount of \$55,934.09, which reduced the overpayment amount to \$827,091.61;

WHEREAS, the parties desire to amicably resolve all disputes between them giving rise to the alleged overpayment and have reached a mutually acceptable resolution of the outstanding issues;

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to settle their dispute on the following terms:

(1) Main Fair agrees to pay to MFD the sum of eight hundred and twenty-seven thousand, and ninety-one dollars and sixty-one cents (\$827,091.61) in two payments. The first payment of \$500,000.00 will be made upon execution of this agreement; and the subsequent payment of \$327,091.61 will be made on or before December 15, 2016.

(2) Payments shall be by certified check, bank check, or attorney trusts check made payable to "Treasurer, State of New Jersey," and shall be mailed or delivered as follows:

Treasurer, State of New Jersey
Division of Revenue
200 Woolverton Avenue, Building 20
Lockbox 656
Trenton, New Jersey 08646
Attention: Processing Bureau

Main Fair will include [REDACTED] in the memo line so that the payment is properly credited.

(3) The parties agree that this Settlement Agreement is intended to be a final resolution of all issues in connection with the claims at issue in this matter, and is intended by each party to release the other party and its representatives from liability arising out of the claims at issue in this matter, unless MFD is mandated to act by federal or State law; or mandated by order or judgment of a court or administrative agency (other than MFD).

(4) Nothing in this Settlement Agreement waives the rights of any other State or Federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing with a pending or beginning a future civil or criminal investigation or other action for alleged conduct concerning Main Fair or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation for the improper submission of any claims or conduct not specifically covered by this agreement, and to take any action civilly or criminally for such conduct.

(5) Main Fair has agreed to the terms of a Corrective Action Plan (CAP) that will be executed in connection with this settlement agreement.

(6) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-5 above, by the signatures set forth below, the authorization of which is hereby affirmed, Main Fair and MFD agree to the following Release: in consideration of the provision hereof including this release, each party agrees to release the other party and its employees, representatives, officers and directors from liability, obligations and damages arising out of the submission by, and payments to, Main

Fair of any and all claims for reimbursement by Medicaid or the Medicaid Managed Care Program for the covered conduct.

(7) Nothing herein shall constitute an admission, concession or finding of wrongdoing by any party.

(8) This Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(9) This Settlement Agreement may be executed in Counterparts.

(10) This Settlement Agreement is effective upon the last date it is executed by the parties hereto.

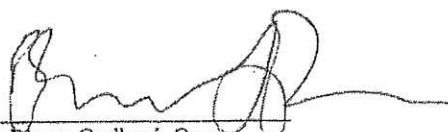
(11) This Settlement Agreement sets forth the entire agreement between and among the parties hereto with respect to the claims described herein and supersedes any other written or oral understandings. This Settlement Agreement does not reflect any other terms or conditions or agreements between or among the parties with respect to any other matter.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed the foregoing Settlement Agreement:

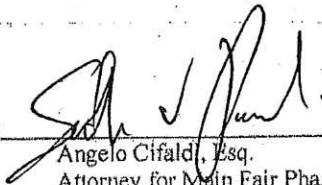
FORM AND CONTENT ACCEPTED AND AGREED TO BY:

SIGNATURES ON THE FOLLOWING PAGE

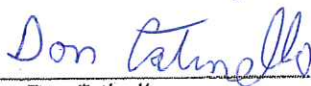
DATE: 04-25-16

By: 
Bhanu Godhani, Owner
Main Fair Pharmacy

DATE: 6/26/2016

By:  on behalf of
Angelo Cifaldi, Esq.
Attorney for Main Fair Pharmacy
Angelo Cifaldi

DATE: 4/28/16

By: 
Don Catinello
Supervisor/Regulatory & Recovery
Office of the State Comptroller
Medicaid Fraud Division

DATE:

By: _____
Josh Lichtblau
Director
Office of the State Comptroller
Medicaid Fraud Division

DATE:

By: _____
Bhanu Godhani, Owner
Main Fair Pharmacy

DATE:

By: _____
Angelo Cifaldi, Esq.
Attorney for Main Fair Pharmacy

DATE: 4/26/16

By: Don Catinello
Don Catinello
Supervisor/Regulatory & Recovery
Office of the State Comptroller
Medicaid Fraud Division

DATE: 4/26/16

By: Josh Lichthblau
Josh Lichthblau
Director
Office of the State Comptroller
Medicaid Fraud Division

**Corrective Action Plan
Main Fair Pharmacy**

Provider # [REDACTED]

Period of Investigation: August 1, 2011 through October 31, 2014

Date Submitted to Main Fair Pharmacy: March 29, 2016

Potential Errors: 4,158 claims totaling \$883,025.70

Corrective Action Discussion: The Office of the State Comptroller, Medicaid Fraud Division ("MFD") conducted an investigation of Main Fair Pharmacy ("Main Fair"), owned and operated by Bhanu Godhani. During the course of the investigation, MFD found multiple instances in which Main Fair billed Medicaid Fee-For-Service and the Managed Care Organizations (collectively referred to as "Medicaid") improperly. To address the financial issues raised by MFD's findings, the parties entered into a Settlement Agreement and Mutual Release ("Settlement Agreement"). This Corrective Action Plan ("CAP") is being entered into in connection with the Settlement Agreement and is operative on the same date as the Settlement Agreement. This CAP identifies all of the areas in which Main Fair Pharmacy demonstrated noncompliance with Medicaid laws, rules or contract requirements and identifies action items to correct each of these areas. MFD identifies both short and long term actions to ensure that Main Fair's billing errors are corrected.

Data Analysis

An investigation by the MFD found that between August 1, 2011 and October 31, 2014, Main Fair billed Medicaid for 4,158 claims, totaling \$883,025.70 that could not be supported by the pharmaceutical wholesaler invoices utilized by Main Fair. After MFD notified Main Fair of this finding, Main Fair provided additional documentation that reduced the total amount of unsupported claims to \$827,091.61.

Program Analysis

MFD alleged that Main Fair's failure to provide supporting documentation for the claims in question was in violation of N.J.S.A. 30:4D-12(d) and N.J.A.C. 10:49-9.8. Nothing herein shall constitute an admission, concession or finding of liability by any party.

Corrective Actions

Issue 1: MFD alleges that Main Fair could not provide wholesaler purchase records.

Corrective Action: Within 30 days of the effective date of the Settlement Agreement, Main Fair shall designate a CAP Coordinator responsible for monitoring compliance with the terms of this CAP and all applicable laws and regulations, and shall provide in writing to the MFD Manager, Regulatory Unit, the name and contact information for the CAP Coordinator within 5 business days of such designation. If the person designated as the CAP Coordinator changes, Main Fair shall provide written notice to the MFD Manager, Regulatory Unit, of the name and contact information for such person within 30 business days of such change.

Corrective Action Plan
Main Fair Pharmacy

Focus Areas:

- a. The CAP Coordinator shall ensure that all purchase records (i.e., wholesaler's invoices) are properly retained, organized and filed.
- b. On a daily basis, the CAP Coordinator shall verify that all billed prescription labels are filled and ready for dispensing.
- c. On at least a quarterly basis, starting from the date of entering into this CAP, the CAP Coordinator shall conduct an inventory analysis to reconcile the purchase and billing records for the 10 medications specified by MFD and generate a report documenting the results of the inventory analysis. The report shall be provided to MFD as specified in this CAP.

Issue 2: Main Fair submitted claims to Medicaid for medications that MFD alleges it did not have in its inventory at the time of submission.

Corrective Action: Main Fair shall bill Medicaid for prescriptions only when the medication is in stock.

Focus Areas:

- a. Pharmacy staff shall not submit any Medicaid claims until they ensure that the medication is physically in stock.
- b. If a Medicaid beneficiary presents a prescription for a medication or product that is not in stock, Main Fair shall either (i) obtain the item within 72 hours or (ii) locate a pharmacy that is reasonably accessible to the Medicaid beneficiary and has the product in stock and transfer the prescription to such pharmacy.
- c. On a monthly basis, the CAP Coordinator must conduct an analysis to determine whether Main Fair has submitted any Medicaid claims for the 10 medications specified by MFD that were not in stock at the time of submission. If, however, the CAP Coordinator discovers that the Medicaid claims submitted for the medications were not in stock, then Main Fair must reverse the claim thereby reimbursing Medicaid for those identified claims.
- d. Within 30 days of the effective date of the Settlement Agreement, all pharmacy staff employed by Main Fair must attend training regarding the requirements of this CAP. Thereafter, Main Fair must provide such training to all pharmacy staff on an annual basis. The training shall include, but not be limited to, providing a copy of the CAP to all pharmacy staff along with guidance on the actions necessary to comply with the requirements of the CAP. The CAP Coordinator shall document the attendance of all employees. At a minimum, the documentation shall include the employees' signatures at the beginning and the end of the training session, indicating their attendance and that they were provided a copy of the CAP. This documentation requirement applies to all training provided to Main Fair's employees and management.

Issue 3: MFD alleges that medications were dispensed that had a different National Drug Code ("NDC") number than the NDC number billed to Medicaid.

Corrective Action: Main Fair shall dispense the same NDC number billed to Medicaid.

Corrective Action Plan
Main Fair Pharmacy

Focus Areas:

- a. Pharmacy staff must reconcile the NDC number of the products dispensed by Main Fair with what is billed for payment by or through Medicaid to ensure that claims billed to Medicaid accurately reflect the NDC number of the product that is being dispensed.
- b. In circumstances when a pharmacist needs to change a prescription order, the pharmacist on duty must contact the prescribing physician and document the pertinent information, including, but not limited to, the date and time of the call, the name of the physician or physician's representative, the phone number that was dialed and the quantity ordered by the physician.

Issue 4: Main Fair did not adhere to the industry standard of reversing claims for medication that was not picked up within 14 days.

Corrective Action: Main Fair must reverse claims in its system for prescriptions not picked up according to the industry standard of 14 days.

Focus Areas:

- a. If a Medicaid beneficiary does not pick up a prescription within 14 days, the prescription claim must be reversed from the computer system and the medication placed in stock by a pharmacist.
- b. Within 30 days, all pharmacy staff employed by Main Fair must attend training regarding the requirements of this CAP. Thereafter, Main Fair must provide such training to all pharmacy staff on an annual basis. The training shall include, but not be limited to, providing a copy of the CAP to all pharmacy staff along with guidance on the actions necessary to comply with the requirements of the CAP.

Implementation and Reporting

- a. For a three year period, beginning on the effective date of the Settlement Agreement, pursuant to the schedule that follows, the CAP Coordinator must submit reports to the MFD Manager of the Regulatory Unit that demonstrate Main Fair's compliance with all of the Corrective Actions set forth in this CAP.
- b. For the first year, such report must be submitted to the Manager of the Regulatory Unit on a quarterly basis no later than the following dates: June 1, 2016, September 1, 2016, December 1, 2016 and March 1, 2017.
- c. In the second year, such report must be submitted to the Manager of the Regulatory Unit on a semi-annual basis, no later than the following dates: September 1, 2017 and March 1, 2018.
- d. In the third year, such report must be submitted to the Manager of the Regulatory Unit no later than March 1, 2019.
- e. MFD has provided Main Fair with a list of the 10 medications that it will need to conduct the required inventory analyses for the first year. In the second and third years, MFD will provide a list of the 10 medications no later than 60 days from the start of the applicable year.
- f. Failure by Main Fair to include all information necessary to demonstrate compliance with the CAP and/or to meet the reporting deadlines under the CAP shall constitute grounds for MFD to declare Main Fair in default of the Settlement Agreement, which MFD shall communicate in writing to Main Fair through a Notice of Default. Upon receipt of a Notice of Default, Main Fair shall have 30 days to cure the deficiency identified by the Notice of Default. Failure to cure a Notice of Default shall permit MFD to take action

**Corrective Action Plan
Main Fair Pharmacy**

against Main Fair, including, but not limited to a fine of \$1,000 for the first offense; a \$2,500 fine for the second offense and a \$7,500 fine for the third offense. For purposes of determining compliance with this CAP, an error rate of 4.99% or less for each required inventory analyses shall be considered *de minimis* and shall not constitute a default under the Settlement Agreement. An error rate of 5.00% or higher shall, in the MFD's sole discretion, constitute an adequate basis to constitute a default.

Violations

Main Fair is on notice that MFD asserts that the underlying conduct which gave rise to the recovery in this matter was deemed improper or abusive of the New Jersey Medicaid and/or NJ FamilyCare program and that said conduct must cease. Main Fair is also on notice that any future violation(s) of the underlying conduct addressed in the CAP could lead to exclusion from the New Jersey Medicaid and/or NJ FamilyCare programs; or in projects or contracts performed with the assistance of and subject to the approval of the Medicaid Agent and/or the New Jersey Medicaid program pursuant to N.J.A.C. 10:49-11.1. Additionally, any future violations of the underlying conduct addressed in this CAP could lead to future recovery attempts by MFD, including but not limited to, the assessment of civil penalties of payment of an amount not to exceed three-fold the amount of such excess benefits or payments; or payment in the sum of not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. §3729 et seq.), pursuant to N.J.S.A. 30:4D-17(e).

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

DATE: 04-13-2016

By: 

Bhannu Godhani, Owner
Main Fair Pharmacy